

CARL REED, et al.,)
)
 Plaintiff,)
 v.) No. 3:09-0616
) JUDGE ECHOLS
 STATE OF TENNESSEE, et al.,)
)
 Defendants.)

To the extent the latter motion requests recusal of the undersigned, the motion is hereby DENIED. Plaintiffs Carl Reed and Constance Haliburton-Bryant express their displeasure with the legal recommendations made by Magistrate Judge Juliet Griffin in the R&R; however, parties' disagreement with the result of a

court's legal analysis is not a proper ground for recusal of the Court under 28 U.S.C. §§ 144 & 455.

The Magistrate Judge explains in the R&R why this case was improvidently removed to this Court from the General Sessions Court in Rutherford County, Tennessee. The Magistrate Judge recommends that this Court grant Mr. Gleaves' motion to remand the case to state court and deny as moot the pending motion to dismiss filed by the State of Tennessee and its Legislature (Docket Entry No. 6). Further, the Magistrate Judge recommends that Mr. Reed and Ms. Haliburton-Bryant, who removed the case to this Court, should be required to pay just costs and any actual expenses, including attorney fees, incurred by Mr. Gleaves as the result of the removal of the action to this Court. See 28 U.S.C. § 1447(c).

In reviewing an R&R, the Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

In their untimely objections, Mr. Reed and Ms. Haliburton-Bryant do not point to any specific error of fact or law in the R&R. They continue to insist that they are allowed to remove this landlord-tenant dispute to federal court because they assert violation of their federal constitutional rights.

Citing appropriate cases, Magistrate Judge Griffin reasoned in the R&R that grounds for removal of an action may be based only on the underlying complaint filed in state court, and Plaintiffs

cannot create federal jurisdiction by filing a complaint simultaneously with the notice of removal. Further, the Magistrate Judge noted that "[i]f Mr. Reed and Ms. Bryant intend to pursue an action against these 16 defendants, they will have to do so in a separately filed complaint." (Docket Entry No. 8, R&R at 5.)

Having carefully reviewed the file, the Court finds that no error of fact or law appears in the R&R. The case was improperly removed to this Court from the state court, it must be remanded, and Mr. Gleaves is entitled to just costs and actual expenses for the improper removal. Accordingly,

(1) to the extent the "Notice of Intent to File Motion For Recusal By Magistrate Juliet Griffin and Judge Robert Echols by Pro Se Plaintiffs Carl Reed and Constance Haliburton-Bryant" (Docket Entry No. 11) applies to the undersigned, the motion for recusal is hereby DENIED;

(2) Plaintiffs' untimely filed "Notation of Plaintiffs' Objections To Content And Conclusions, Magistrate Report & Recommendation" (Docket Entry No. 10) is hereby OVERRULED;

(3) the R&R of the Magistrate Judge (Docket Entry No. 8) is hereby ACCEPTED;

(4) Mr. Gleaves' motion for remand (Docket Entry No. 5) is hereby GRANTED;

(5) Carl Reed and Constance Haliburton-Bryant are hereby required to pay just costs and any actual expenses, including

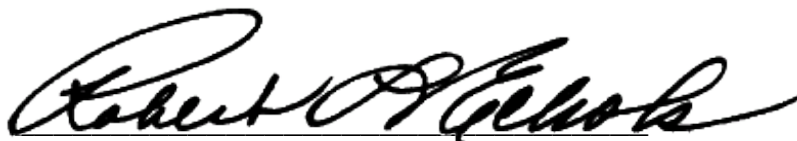
attorney fees, incurred by Mr. Gleaves as a result of the improper removal of this case from state court to federal court, pursuant to 28 U.S.C. § 1447(c);

(6) Mr. Gleaves may file **within ten (10) days** after entry of this Order his motion requesting just costs and any actual expenses, including attorney fees, incurred by him as a result of the removal and the Court will enter a subsequent Order concerning such costs and expenses;

(7) all other pending motions are hereby DENIED AS MOOT; and

(8) the Clerk is hereby DIRECTED to send a certified copy of this Order by first class mail to the Clerk of the General Sessions Court for Rutherford County, Tennessee, pursuant to 28 U.S.C. § 1447(c).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written in a cursive style.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE